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**IN THE
COURT OF APPEALS OF INDIANA**

JODY L. SHOEMAKER,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

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No. 20A05-0806-CR-349

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0612-FA-63

October 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jody Shoemaker (“Shoemaker”) pleaded guilty in Elkhart Superior Court to Class A felony child molesting and was sentenced to forty years executed in the Department of Correction. Shoemaker appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On February 21, 2008, Shoemaker pleaded guilty to molesting his roommate’s thirteen-year-old daughter, K.B. The plea agreement provided that the executed portion of Shoemaker’s sentence would not exceed forty years. On April 10, 2008, Shoemaker was sentenced to serve forty years executed. Shoemaker now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Shoemaker argues that his forty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Concerning the nature of the offender, we observe that Shoemaker’s criminal history consists of one misdemeanor conviction for domestic battery. Shoemaker failed to appear for court proceedings in connection with that charge and violated the terms of his probation imposed as a result of that conviction. Consequently, the trial court

concluded that Shoemaker “has evidenced a disdain for the judicial process[.]” Appellant’s App. p. 74. However, the court did consider his guilty plea and lack of felony convictions as mitigating circumstances.¹

The nature of Shoemaker’s offense more than supports the trial court’s decision to impose a forty-year sentence. Shoemaker, as K.B.’s de facto stepfather, was in a position of trust with respect to K.B. Shoemaker violated that position of trust by engaging in sexual intercourse with thirteen-year old K.B. on several occasions. Tragically, as a result of the molestation, K.B. became pregnant and has since borne the child. As a result of the repeated incidents of molestation, K.B. has suffered significant and lasting physical and emotional trauma.

For all of these reasons, we conclude that Shoemaker’s forty-year executed sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and BROWN, J., concur.

¹ Shoemaker argues that his substance abuse issues and manic depressive diagnosis should have been considered as mitigating. However, he did not claim that these circumstances were mitigating at sentencing, and therefore, he has waived his argument for purposes of appeal. See Simms v. State, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003). Additionally, we note that the only evidence of his mental illness was his own statement to the probation department that he was diagnosed as manic depressive at age fifteen. Finally, we reject Shoemaker’s argument that the trial court abused its discretion when it declined to find as a mitigating circumstance that his incarceration would impose an undue hardship on his children. See Nicholson v. State, 768 N.E.2d 443, 449 n.13 (Ind. 2002).